

**Minutes of the
Free Market Protection and Privatization Board**

Thursday, May 8, 2014 - 2:00 p.m.

Room 20, House Building

State Capitol Complex

Members present:

Kimberley Jones (Chair), Brian Gough (Vice Chair), Sen. Howard Stephenson, Sen. Karen Mayne, Rep. Johnny Anderson, Rep. Lynn Hemingway, Thomas Bielen, Sherrie Hayashi, Manuel Torres, Bob Myrick, Russell Anderson, Louenda Downs, Steve Fairbanks, and LeGrand Bitter

Members absent:

Randy Simmons, Kerry Casaday, and Al Manbeian

Staff present:

Cliff Strachan, Governor's Office of Management and Budget (GOMB)

Note: Additional information including related materials provided at the meeting and an audio recording of the meeting can be found at <http://gomb.utah.gov/operational-excellence/privatization-board/> and the Utah Public Meeting Notice Website (<http://www.utah.gov/pmn>).

1. Welcome and Introductions

Kimberley Jones chaired the meeting. Al Manbeian was excused.

2. Public Comment (10 minutes)

Nathan Andelin, Relational Data, noting that the State Office of Education (USOE) is not providing information requested by the board, addressed the board concerning the perception that the Utah State Office of Education is a fourth branch of government. He provided excerpts from Utah's Constitution that showed that power given to the legislature and its created bodies enables this body to obtain the information needed to do its work.

3. Board Business/Minutes

a. Minutes from January 9, 2014

Motion: Louenda Downs moved to approve the minutes of the April 10, 2014 meeting. CARRIED

b. Privatization Process Advisory Committee

Cliff Strachan reported on the April 29 meeting of the committee, which met with the consultants to review a Draft Guiding Principles, Core Business Process, and Service Delivery Form. The document, with edits, was provided to the board. He stated that the accounting method required in statute is still a work in progress but expects it will be provided at the May 27 committee meeting. Rep. Hemingway requested that the process define "unfair" as in "unfair competition".

3. Commercial Activities Inventory (CAI)

a. Department of Commerce

Francine Giani, Executive Director, presented an overview of the agency, its divisions, and activities. Her presentation included a list of services already privatized including a variety of online services and database management functions. The department does not rely on General Funds; rather its funded by fees. She showed that application growth management (i.e., the move to online services) has allowed the agency to increase its volume of work while reducing its staffing about 20 percent over 11 years. Ms. Giani noted that in recent years, the idea of privatizing legal representation for administrative actions and lawsuits has been considered but thinks recent changes at the Utah Office of the Attorney General (AG) has improved the relationship and the idea may not need following up as their legal needs are now being better met.

Via questions and answers, the board learned that:

- employees for the One-Stop Business Registration program in ten cities and four state agencies are state employees; there are no city employees in the program.
- the agency typically lapses funds back to the General Fund each year.
- the Executive Director would prefer that agencies have staff attorneys rather than rely on the AG's office.
- agencies unhappy with the relationship with the AG's office in recent years should reach out given new management in that office.
- a breach of trust by a law enforcement agency of the Controlled Substances Database resulted in a tightening of procedures as to who can view the database; Commerce has never had a breach of data such as that experienced by the Department of Health a couple years ago, rather, the cited case was that of a bad actor who had authorized access; generally, it makes sense that doctors and law enforcement have access.
- the Child Protection Registry is run by a private organization and has resulted in few prosecutions.

4. Review Privatization of an Activity

Noting that an agenda item had been dropped here, Mr. Strachan advised that GOMB is working with Utah Correctional Industries (UCI) on a print services proposal. He noted that the board had recommended in 2005 that state operated print services be outsourced. The chairs will be briefed when the proposal is ready.

Sen. Stephenson requested that UCI and UDOT be invited to talk about sign shops and requirements for state agencies to purchase from UCI. Steve Fairbanks requested UCI come present on the agency and its objectives.

5. Review Issues Concerning Agency Competition with the Private Sector

a. Utah Science Technology and Research (USTAR)

Robert Behunin and Jim Grover representing USTAR provided background on USTAR, which is now in its eighth year, has built two research buildings (at the University of Utah and Utah State University), which currently support 50 researchers in 20 teams to put patents and licenses into the marketplace. USTAR funds help faculty members produce technologies and innovations that can result in patents and licenses - it is an effort to privatize that which is publicly funded and developed.

Referencing the LASSI Service Center at Utah State, which topic was initiated by a complaint from a private company at the March 27 meeting of the Competition Review Advisory Committee, the board learned that LASI received de minimis funding for LiDAR (a light detection and ranging technology used to map) resulted in research papers and student training. A couple of licenses were issued (one in Utah and one in Canada) that resulted in some royalty checks for the university. USTAR's funding of LiDAR was discontinued some years ago.

Through questions and answers, the board learned that:

- USTAR does not fund companies but rather attracts companies to: i) partner with developers of technology or innovations in the program or ii) acquire licenses from those developers.
- USTAR licenses the results of research and development on behalf of the state and its universities.
- licensing revenues are generally split between the universities and the state as follows: the first \$15 million goes to the universities and the excess is evenly split between universities and the state.
- Funding for LiDAR at LASSI was initiated in 2008 and later discontinued as it was not marketable.
- LiDAR continues on a fee basis, generally sponsored research by federal or state government sources.
- fees can cover overhead, and they cannot charge the federal government more than they charge the private sector; universities must balance educational applications and academic freedom.
- USTAR staff respond to a question on the utilization rate for the USTAR labs built by the state.
- patenting and licensing activities do not compete with the private sector; some services within the program could be a little grey - they ask if it has a market purpose and then move it out of the university.
- USTAR tries to put private sector interests together with research and development from the program; partnerships.

Rep. Anderson requested that USTAR do a comprehensive presentation covering its activities. Mr. Grover said that could be done after the new executive director is onboard.

b. Competition Review Advisory Committee

Mr. Strachan advised that the meeting scheduled for April was cancelled for a lack of information. He noted that Sen. Stephenson had contacted him concerning that lack of information and has invited him, along with State Schools Superintendent Martell Menlove, to appear at the legislature Administrative Rules Review Committee meeting on May 12 to discuss the timeline for requests and responses. He said that since that invitation, he has received some financial information (but was seeking more detail) and scheduled a site visit with the USOE IT Division.

6. Other Business/Adjourn

Motion: Rep. Hemingway moved to adjourn. CARRIED

Scheduled Board meetings:

- Thursday, June 12, 2014 at 2 pm in 20 House Building

Advisory Committees:

- Competition Review - TBD
- Privatization Process - May 27, 2014 at 2:30 PM, Room 240, Capitol Building
- DTS Review - May 13, 2014 at 2:00 PM, Room 210, Capitol Building